

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the matter of)
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Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of)
SMR Systems in the 800 MHz)
Frequency Band)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PR Docket No. 93-144
RM-8117, RM-8030,
RM-8029

and

Implementation of Section 309(j))
of the Communications Act-)
Competitive Bidding)
800 MHz SMR)

PP Docket No. 93-253

REPLY COMMENTS OF ADVANCED MOBILECOMM, INC.

Advanced MobileComm, Inc. ("AMI"), by its counsel and pursuant to Section 1.415 of the Commission's Rules, hereby replies to the Comments on the Further Notice of Proposed Rulemaking, FCC 94-271 (November 4, 1994) ("FNPRM") in the above-captioned proceedings. By its FNPRM, the FCC proposes to implement rules governing the licensing and construction of wide area 800 MHz SMR systems.

In response to the FNPRM, the FCC received over one hundred Comments from every segment of the SMR industry, including national and regional SMR operators, local SMR operators and industry trade associations.¹ These Comments

¹See, e.g., Comments of Nextel Communications, Inc. ("Nextel"), PR Docket 93-144 and PP Docket 93-253, January 5, 1995; Comments of the Personal Communications Industry Association ("PCIA"), PR Docket 93-144 and PP Docket 93-253, January 5, 1995; Comments of the American Mobile Telecommunications Association ("AMTA"), PR Docket 93-144 and PP Docket 93-253, January 5, 1995; Comments of Russ Miller Rental, PR Docket 93-144 and PP Docket 93-253, January 5, 1995.

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reflect a diversity of views on the issues in this proceeding. Since the filing of the Comments, there have been concerted industry efforts to identify common ground among these diverse views. The outcome of these efforts to build some consensus is, however, uncertain.

In its Comments, AMI expressed its belief that, with the exception of the border areas, adoption of the FNPRM's proposed division of the upper 200 SMR channels into four 50 channel blocks equitably balanced the interests of promoting competition with the need for the introduction of new, spectrally-efficient technologies in the 800 MHz SMR band. Although the Comments on this issue included proposals varying from one wide-area license per market² to twenty ten channel licenses in each market,³ the majority of Commenters support in some fashion multiple licenses in each market. AMI concurs with this view, and notes that a single license in each market effectively would preclude by regulatory decree competition in the provision of wide-area SMR services. For this reason, AMI renews its support for a balanced channel allocation plan with multiple licenses, such as that proposed in the FNPRM.

However, AMI also believes that the Commission should allow the market to operate to enable the highest use of the 200 channel wide-area SMR allocation. To this end, the FCC's Rules should not restrict a single licensee from holding more than one

²Nextel Comments at 40.

³PCIA Comments at 12.

wide-area license in any market, provided, of course, that the licensee is otherwise in compliance with the CMRS spectrum cap. Accordingly, an applicant should be free to acquire, either at auction or otherwise, all channel blocks in a given market if the market should so dictate.

In its Comments, AMI further endorsed the issuance of the wide-area SMR licenses by the 174 Economic Areas ("BEAs") as defined by the Bureau of Economic Analysis of the Department of Commerce. AMI noted its belief that BEA licensing would more accurately reflect natural SMR market boundaries than would licensing by Major Trading Areas ("MTAs"). In addition, AMI expressed its view that BEA licensing would promote competition by enabling regional operators to target for acquisition licenses in their region at a more attainable cost.

On review of the Comments in this Docket, AMI is persuaded that, in fact, there are a number of regional, and perhaps even local, SMR operators who would be viable candidates for wide-area licenses in their regions, and well-qualified operators of wide-area systems. The participation of many of these parties in the provision of wide-area SMR service, however, could well be precluded by the construction and operational costs associated with an MTA system.

Conversely, AMI believes that the large number of wide-area licenses that would result from licensing, for example, by the over seven hundred MSAs and RSAs (and about 3,000 wide-area licenses with four licenses per market) may balkanize wide-area

SMR operations and encumber the ability of the licensees to attain economies of scale needed to support the investment in new technology. In any event, the MSA and RSA boundaries do not capture natural wireless markets as well as the BEAs. The costs of consolidation to obtain licenses across MSAs and RSAs could well become prohibitive, as would the potential administrative costs of issuing thousands of MSA and RSA licenses. Accordingly, AMI continues to believe that BEA licensing reflects the best, albeit imperfect, balancing of interests here.

Finally, several parties discuss in their Comments the impact of adoption of wide-area SMR licensing by the FCC on existing wide-area authorizations, or pending wide-area applications filed prior to August 9, 1994. Nextel, for example, in its Comments (at iv) suggests that the FCC may consider cancelling any wide-area authorizations permitting use of the 150 General Category channels or the 50 Business Category channels obtained by the licensee through intercategory sharing. AMI opposes any such action in this Docket regarding existing authorizations or pending applications as inconsistent with the due process requirements of the Communications Act and as infirm policy.

To this end, AMI cautions that any action taken with respect to specific license grants requires full Section 316 modification of license due process. Short of that process -- which has not been the basis of this proceeding -- the existing licensees are entitled to continue to construct and operate their

systems in accordance with their license terms. The FCC may of course recover any channel capacity not constructed in accordance with the license terms in due course.

As a matter of equity, moreover, existing licensees and pending applicants have expended many resources and much effort in reliance upon these earlier Commission actions. The limited amount of spectrum that might be recaptured for other uses through modification or cancellation in part of existing wide-area authorizations, or dismissal of pending applications, simply is not justified by the extreme disruption to the business plans of bona fide licensees and applicants, and their customers, that would result from this action.

For these reasons, AMI supports adoption of the FNPRM with modifications consistent with those described herein and in its earlier-filed Comments.

**Respectfully submitted,
ADVANCED MOBILECOMM, INC.**

By:


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March 1, 1995

CERTIFICATE OF SERVICE

I, Robert B. Kelly, hereby certify that a copy of the foregoing Reply Comments of Advanced MobileComm, Inc. was mailed, postage prepaid, this 1st day of March, 1995, to the following parties:

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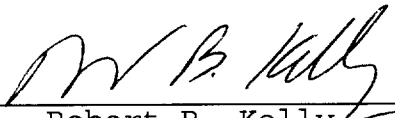
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